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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 RICHARD LEE JOHNSEN,

11 Plaintiff,

12 v.

13 HARLAN and GOMEZ,

14 Defendants.  
15

CASE NO. C19-58 MJP

ORDER ON DEATH OF  
PLAINTIFF [FRCP 25(A)(1)]

16 This is a civil rights action brought under 42 U.S.C. § 1983. The Court had recently  
17 denied a motion to dismiss by the Defendants (Dkt. No. 46) and ordered the parties to confer and  
18 prepare a Joint Status Report which was due on January 20, 2020. (Dkt. No. 47.)

19 Defendants have filed a Notice of Inability to Comply with Scheduled Order of  
20 December 19, 2019 Due to Death of Plaintiff. (Dkt. No. 49.) The pleading reports the death of  
21 pro se Plaintiff Richard Lee Johnsen in a house fire on November 28, 2019 and includes both  
22 news reports on the fire and a media report by the Skagit County Coroner reflecting Plaintiff's  
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1 death from “inhalation of products of combustion due to residential fire” which was ruled an  
2 accident. (Dkt. No. 49-1, Declaration of Erik Pedersen.)

3 Rule 25(a)(1) of the Federal Rules of Civil Procedure provides that if a party to an action  
4 dies, and the claim is not extinguished, the action shall be dismissed as to the deceased party  
5 unless substitution is made within 90 days of the service of a suggestion of death. *See* Fed. R.  
6 Civ. P. 25(a)(1). Because Plaintiff’s request for relief included a request for damages, Plaintiff’s  
7 claim was not extinguished by his death and, thus, the provisions of Rule 25 come into play.

8 In Barlow v. Ground, 39 F.3d 231, 233 (9th Cir. 1994), the Ninth Circuit held that Rule 25  
9 requires two affirmative steps to trigger the running of the 90-day period. “First, a party must  
10 formally suggest the death of the party upon the record. Second, the suggesting party must serve  
11 other parties and non-party successors of the deceased with the suggestion of death ....” *Id.*

12 While Defendants have completed the first step of this process by filing a notice of death,  
13 there appears, as yet, to have been no attempt to complete the second step; i.e., “service of other  
14 parties and non-party successors of the deceased with the suggestion of death.” Although  
15 Plaintiff was out of custody at the time of his death, he clearly had been in the custody of the  
16 Skagit County authorities in the recent past. Presumably the data collected upon his arrest and  
17 subsequent incarceration would have included some information about next of kin or emergency  
18 contacts. The Court further presumes that the Skagit County Prosecuting Attorney’s Office  
19 would have access to that information and could use it to provide the notice of death and the  
20 existence of this lawsuit to “non-party successors of the deceased.”

21 With that in mind,

22 IT IS ORDERED that Defendants’ counsel will make all reasonable efforts to (1)  
23 ascertain the identity and contact information of any non-party successors to the deceased; and  
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1 (2) provide such persons as they discover a copy of the notice of Plaintiff's death and the  
2 existence of this lawsuit.

3 IT IS FURTHER ORDERED that Defendants' counsel shall provide the Court with a  
4 status report regarding the above-ordered efforts by **February 7, 2020**.

5 IT IS FURTHER ORDERED that Defendants are relieved of the requirement to file a  
6 Joint Status Report, and the case is STAYED until further notice.

7 The clerk is ordered to provide copies of this order to all counsel.

8 Dated January 8, 2020.

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10 Marsha J. Pechman  
11 United States Senior District Judge  
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